THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :_12.02.2007

\+ **WP (C) No.14032/2006**

MISS RENU VASHIST ...Petitioner

- versus -

NATIONAL CAPITAL TERRITORY OF DELHI & ANR ...Respondents

with

WP (C) 14034/2006

MISS ALKA ...Petitioner

- versus -

NATIONAL CAPITAL TERRITORY OF DELHI & ANR ...Respondents

Advocates who appeared in this case:
For the Petitioners : Mr S.R. Kalkal
For the Respondents : Ms Avnish Ahlawat

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. Both these petitions are taken up for disposal and are being disposed of together as they raise common issues.

2. The question that is raised in these petitions is when reserved category candidates qualify on merit in the open (general) category also, should they be placed against the quota for the reserved category or in the open (General) category ?

3. Various arguments were advanced by the counsel for the petitioners as well as the counsel for the respondents. The following decisions of the Supreme Court were referred to:-

i) ***Indra Sawhney v. Union of India*: 1993 (1) SCT 448: 1992 Supp (3) SCC 217;**

ii) ***Ritesh R. Sah v. Dr. Y.L. Yamul & Ors*: 1996 (2) SCT 524: 1996 (3) SCC 253;** and

iii) ***Union of India and Anr v. Satya Prakash & Ors*: 2006 (2) SCT 500**.

4. It was contended on behalf of the petitioners that when candidates belonging to the reserved category qualify on merit, they ought to be placed in the open (general) category without exhausting one seat from the reserved category. It was further contended by the learned counsel for the petitioners that for the purposes of exercising the choice of institution, however, all persons belonging to the reserved category should be considered in order of their inter se merit, irrespective of whether they have been placed in the open (general) category or in the reserved category.

5. The learned counsel for the respondents, however, submitted that at the time of counseling, the candidates are required to make an option as to whether they seek consideration under the general category or under the reserved category. If a candidate who belongs to a reserved category is otherwise eligible to be taken under the general category on merit does not wish to opt for admission in the general category, then he has to be placed under the reserved quota and would not be given admission under the general category. Ms Ahlawat, who appeared on behalf of the respondents, further submitted that if a candidate who is eligible under both the categories is called for counseling for the general category and he does not turn up, then he would loose his chance of being placed in the general category and would only be considered consequently under the reserved category, if he appears at that stage. It is for this reason that the candidates who qualify under both the categories may have to be placed only under the reserved category and not under the general category meaning thereby that seats of the reserved category would be exhausted.

6. Ms Ahlawat also submitted that it may be beneficial for a reserved category candidate who qualifies under both the categories to not opt for admission under the general category if he is otherwise well-placed in the list of reserved category candidates for the purposes of choice of institution. In such eventuality, a candidate not opting for admission under the general category would have to be treated as a candidate who takes up one seat from the reserved

quota thereby exhausting one such reserved seat. It is on the basis of this criteria that the petitioners have been unable to secure admission under the reserved category inasmuch as the quota seats were exhausted by those persons who were not placed in the general category but in the reserved category.

7. Considering the arguments advanced by the learned counsel for the parties, the question that arises is whether a student who qualifies under both the reserved category as well as under the general category is to be treated differently for the purposes of admission and for the purposes of choice of institution. This is in addition to the initial question that was posed hereinabove as to whether such a candidate would be treated as being selected against the quota or would be treated as a general candidate. Insofar as the latter question is concerned, as observed in ***Satya Prakash*** *(supra)*, the issue is no longer debatable in view of the judgment of the Supreme Court in the case of ***Indra Sawhney*** *(supra)* which held as under:-

> "In this connection it is well to remember that the reservations under Article 16 (4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

8. As regards the workings of the admission and choice of institution with regard to such candidates, the Supreme Court has made a clear pronouncement on this issue in ***Ritesh R. Sah*** *(supra)* to the following effect:-

> "In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less, meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in wherever colleges the seats should be available. *In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate."* (emphasis supplied)"

9. The entire issue has been simplified by the Supreme Court in ***Satya Prakash*** *(supra)* as under:-

> "14. This position has been made crystal clear in Ritesh R. Sah (supra) as referred to above that while a reserved category candidate entitled to admission on the basis of his merit, will have the option (preference) of taking admission in the college where specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved candidate."

10. These decisions make it clear that a candidate who qualifies both under the reserved category as well as under the general category would for the purposes of admission be treated as a general category candidate without exhausting a seat from the reserved quota. But, for the purposes of exercising the choice of institution, such a candidate would be offered choices as per the inter se ranking of only reserved category candidates. This ensures that such a person would not loose out by being placed in the general category in comparison to those candidates who are not meritorious enough, but get admission on the basis of their reservation.

11. In the present case the learned counsel for the respondents has submitted that all reserved candidates who fell within general merit were offered seats in the general category and most of them have taken admission against the general quota. However, some of the reserved candidates insisted for admission in their own category and they did not come for counseling in the general merit order and hence, they were admitted against their own category. This clearly means that there are some reserved category candidates who, although they had qualified on merit under the general category also, were given admission against the quota under the reserved category. They ought to have been considered for seats only under the general category in view of the position indicated above. It is further pointed out that although there are other candidates who belong to the reserved category who are higher in order of merit than the petitioners, none of them had made any complaint or have

approached the Court. This makes it clear that the petitioners were the next in line seeking admission. It appears that from the information provided by the learned counsel for the respondents that for the DST category (to which the petitioners belong) twelve seats were reserved. Out of this quota, only ten have been filled up and two remain to be filled up. Twenty one applicants belonging to this category were adjusted against the general category as they qualified for that category also. Now, there are no other candidates between the petitioners and those already granted admission out of this category, inasmuch as no such candidate has complained or come to Court. And, two seats remain to be filled up. Accordingly, it is directed that the petitioners be granted admission against the two vacant reserved quota seats under the DST Category. This direction for admission is being given in view of the position in law as noticed above as well as in view of the peculiar facts and circumstances of the present case inasmuch as persons belonging to the same category as the petitioners but who have ranks higher than the petitioners, have neither approached the respondents for admission nor have they approached in Court. The learned counsel for the petitioner also makes it clear that the admissions that are to be granted to the petitioners would not absolve the petitioners from fulfilling any other criteria which are necessary for taking the examination and obtaining the Diploma in the ETE Course.

12. The writ petitions are allowed to the extent indicated above. The directions be complied with immediately. The parties shall bear their own costs.

Dasti to counsel for both the parties.

BADAR DURREZ AHMED
(JUDGE)

February 12 , 2007
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